

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

Franco DiMartino  
2 Sugar Maple Drive  
Newtown Square, Pennsylvania 19073

Plaintiff

V.

Wells Fargo & Company  
420 Montgomery Street  
San Francisco, California 94104

and

Wachovia Corporation Long Term  
Disability Plan a.k.a. Wachovia  
Corporation Long Term Disability Plan  
(As Amended and Restated Effective  
January 1, 2009)  
c/o Wells Fargo & Company  
420 Montgomery Street  
San Francisco, California 94104

and

Wachovia Corporation  
c/o Wells Fargo & Company  
420 Montgomery Street  
San Francisco, California 94104

and

Liberty Mutual a.k.a. Liberty Life  
Assurance Company of Boston  
100 Liberty Way  
Dover, New Hampshire 03820

and

Mass Mutual Financial Group a.k.a.  
Massachusetts Mutual Life Insurance  
Company and affiliates

Civil Action No.

1295 State Street :  
Springfield, Massachusetts 01111-0001 :

and :  
:

Evergreen Investment Management :  
Company :  
c/o Wells Fargo & Company :  
420 Montgomery Street :  
San Francisco, California 94104 :

and :  
:

Evergreen Asset Management :  
c/o Wells Fargo & Company :  
420 Montgomery Street :  
San Francisco, California 94104 :

and :  
:

Evergreen Investments :  
c/o Wells Fargo & Company :  
420 Montgomery Street :  
San Francisco, California 94104 :

and :  
:

Wachovia Shared Resources, agent for :  
Evergreen Asset Management :  
c/o Wells Fargo & Company :  
420 Montgomery Street :  
San Francisco, California 94104 :

### **COMPLAINT**

1. Plaintiff, Franco DiMartino, is a citizen of the Commonwealth of Pennsylvania and resides at 2 Sugar Maple Drive in Newtown Square, Pennsylvania 19073.

2. Defendant, Wells Fargo & Company is a corporation incorporated in a state other than the Commonwealth of Pennsylvania, and maintains corporate offices at 420 Montgomery Street in San Francisco, California 94104.

3. Defendant, Wachovia Corporation Long Term Disability Plan a.k.a. Wachovia Corporation Long Term Disability Plan (As Amended and Restated Effective January 1, 2009) is a Long Term Disability Plan controlled under the Employee Retirement Income and Security Act, and is subject to service of process at the following address: Wells Fargo & Company, 420 Montgomery Street in San Francisco, California 94104.

4. Defendant, Wachovia Corporation, to the extent that it is still in existence, is a corporation incorporated in a state other than the Commonwealth of Pennsylvania, and is subject to service of process at the following address: Wells Fargo & Company, 420 Montgomery Street in San Francisco, California 94104.

5. Defendant, Liberty Mutual a.k.a. Liberty Life Assurance Company of Boston, is a corporation incorporated in a state other than the Commonwealth of Pennsylvania, and maintains corporate offices at 100 Liberty Way, Dover, New Hampshire 03820.

6. Defendant, Mass Mutual Financial Group a.k.a. Massachusetts Mutual Life Insurance Company and affiliates, is a corporation incorporated in a state other than the Commonwealth of Pennsylvania, and maintains corporate offices at 1295 State Street, Springfield, Massachusetts 01111-0001.

7. Defendant, Evergreen Investment Management Company, to the extent that it is still in existence, is a corporation incorporated in a state other than the Commonwealth of Pennsylvania, and is subject to service of process at the following address: Wells Fargo & Company, 420 Montgomery Street in San Francisco, California 94104.

8. Defendant, Evergreen Asset Management, to the extent that it is still in existence, is a corporation incorporated in a state other than the Commonwealth of Pennsylvania, and is subject

to service of process at the following address: Wells Fargo & Company, 420 Montgomery Street in San Francisco, California 94104.

9. Defendant, Evergreen Investments, to the extent that it is still in existence, is a corporation incorporated in a state other than the Commonwealth of Pennsylvania, and is subject to service of process at the following address: Wells Fargo & Company, 420 Montgomery Street in San Francisco, California 94104.

10. Defendant, Wachovia Shared Resources, agent for Evergreen Asset Management, to the extent that it is still in existence, is a corporation incorporated in a state other than the Commonwealth of Pennsylvania, and is subject to service of process at the following address: Wells Fargo & Company, 420 Montgomery Street in San Francisco, California 94104.

11. At all times relevant hereto, the aforementioned defendants either employed plaintiff, maintained a Long Term Disability Plan covering plaintiff, constituted a Long Term Disability Plan covering plaintiff, and/or were responsible for determining coverage under a Long Term Disability Plan covering plaintiff.

### **Jurisdiction**

12. This Honorable Court has jurisdiction over the claims set forth herein pursuant to 28 U.S.C. § 1331 and pursuant to 28 U.S.C. § 1367(a).

### **Facts Common to All Counts**

13. Up through September 25, 2009, plaintiff worked for Wachovia Corporation, Evergreen Investment Management Company, Evergreen Asset Management, Evergreen Investments, Wachovia Shared Resources, agent for Evergreen Asset Management, and/or Wells Fargo & Company as a High Yield Research Analyst.

14. In September of 2009, plaintiff was no longer able to work due to urological problems, pelvic problems, a pelvic floor disorder, low back pain, and other associated conditions,

15. At the time of the onset of his disability, plaintiff was covered by the Wachovia Corporation Long Term Disability Plan a.k.a. Wachovia Corporation Long Term Disability Plan (As Amended and Restated Effective January 1, 2009).

16. Additionally, at the time of the onset of his disability, plaintiff was covered by a Disability Policy issued by Mass Mutual Financial Group a.k.a. Massachusetts Mutual Life Insurance Company and affiliates,

17. Plaintiff subsequently applied for payment of benefits under both policies, and has at all times relevant hereto sought to timely exhaust all administrative remedies.

18. Despite submitting relevant and appropriate documentation to plan administrators, plaintiff has not been granted long term disability benefits under either the Wachovia Corporation Long Term Disability Plan or the Disability Policy issued by Mass Mutual Financial Group a.k.a. Massachusetts Mutual Life Insurance Company and affiliates.

### **Count I**

19. Plaintiff incorporates herein by reference paragraphs 1 through 18 of the present Complaint as if set forth herein by reference.

20. The Wachovia Corporation Long Term Disability Plan and the Disability Policy issued by Mass Mutual Financial Group a.k.a. Massachusetts Mutual Life Insurance Company and affiliates, are governed under the terms of the Employee Retirement Income and Security Act.

21. Plaintiff has been disabled since September of 2009 under the terms of The Wachovia Corporation Long Term Disability Plan, and the Disability Policy issued by Mass Mutual Financial Group a.k.a. Massachusetts Mutual Life Insurance Company and affiliates, as well as pursuant to the requirements of the Employee Retirement Income and Security Act.

22. As a direct and proximate result of defendants improper denial of benefits, plaintiff has been denied past long term disability benefits, as well as continues to be denied benefits on an ongoing basis.

WHEREFORE, plaintiff, Franco DiMartino, respectfully requests that this Honorable Court:

1. Declare that he is entitled to benefits under the Wachovia Corporation Long Term Disability Plan and the Disability Policy issued by Mass Mutual Financial Group a.k.a. Massachusetts Mutual Life Insurance Company and affiliates pursuant to 29 U.S.C. §1132(a)1(B) and other sections of the Employee Retirement Income and Security Act;

2. Award him back benefits plus interest under the Wachovia Corporation Long Term Disability Plan and the Disability Policy issued by Mass Mutual Financial Group a.k.a. Massachusetts Mutual Life Insurance Company and affiliates, for the entire time period he was disabled;

3. Award him future benefits plus interest under the Wachovia Corporation Long Term Disability Plan and the Disability Policy issued by Mass Mutual Financial Group a.k.a. Massachusetts Mutual Life Insurance Company and affiliates, until he is no longer disabled; and

4. Award him appropriate attorneys' fees and costs of litigation.

**Count II**

23. Plaintiff incorporates herein by reference paragraphs 1 through 22 of the present Complaint as if set forth herein by reference.

24. The Wachovia Corporation Long Term Disability Plan and the Disability Policy issued by Mass Mutual Financial Group a.k.a. Massachusetts Mutual Life Insurance Company and affiliates, are governed under the terms of the Pennsylvania Declaratory Judgment Act, 42 Pa.C.S.A. §7531 et. seq.

25. Plaintiff has been disabled since September of 2009 under the terms of The Wachovia Corporation Long Term Disability Plan, and the Disability Policy issued by Mass Mutual Financial Group a.k.a. Massachusetts Mutual Life Insurance Company and affiliates.

26. As a direct and proximate result of defendants improper denial of benefits, plaintiff has been denied past long term disability benefits, as well as continues to be denied benefits on an ongoing basis.

27. Plaintiff has joined all parties necessary in order to properly adjudicate the present claim under the Pennsylvania Declaratory Judgment Act.

WHEREFORE, plaintiff, Franco DiMartino, respectfully requests that this Honorable Court:

1. Declare that he is entitled to benefits under the Wachovia Corporation Long Term Disability Plan and the Disability Policy issued by Mass Mutual Financial Group a.k.a. Massachusetts Mutual Life Insurance Company and affiliates;

2. Award him back benefits plus interest under the Wachovia Corporation Long Term Disability Plan and the Disability Policy issued by Mass Mutual Financial Group a.k.a.

Massachusetts Mutual Life Insurance Company and affiliates, for the entire time period he was disabled;

3. Award him future benefits plus interest under the Wachovia Corporation Long Term Disability Plan and the Disability Policy issued by Mass Mutual Financial Group a.k.a. Massachusetts Mutual Life Insurance Company and affiliates, until he is no longer disabled; and

4. Award him appropriate attorneys' fees and costs of litigation.

**Count III**

28. Plaintiff incorporates herein by reference paragraphs 1 through 27 of the present Complaint as if set forth herein by reference.

29. The Wachovia Corporation Long Term Disability Plan and the Disability Policy issued by Mass Mutual Financial Group a.k.a. Massachusetts Mutual Life Insurance Company and affiliates, are contracts

30. Plaintiff has been disabled since September of 2009 under the terms of The Wachovia Corporation Long Term Disability Plan, and the Disability Policy issued by Mass Mutual Financial Group a.k.a. Massachusetts Mutual Life Insurance Company and affiliates.

31. Despite the fact that plaintiff has been disabled under the terms of the aforementioned contracts defendants have refused to pay disability benefits.

32. As a direct and proximate result of defendants improper denial of benefits, plaintiff has been denied past long term disability benefits, as well as continues to be denied benefits on an ongoing basis.

WHEREFORE, plaintiff, Franco DiMartino, respectfully requests that this Honorable Court:



1. Declare that he is entitled to benefits under the Wachovia Corporation Long Term Disability Plan and the Disability Policy issued by Mass Mutual Financial Group a.k.a. Massachusetts Mutual Life Insurance Company and affiliates;

2. Award him back benefits plus interest under the Wachovia Corporation Long Term Disability Plan and the Disability Policy issued by Mass Mutual Financial Group a.k.a. Massachusetts Mutual Life Insurance Company and affiliates, for the entire time period he was disabled;

3. Award him future benefits plus interest under the Wachovia Corporation Long Term Disability Plan and the Disability Policy issued by Mass Mutual Financial Group a.k.a. Massachusetts Mutual Life Insurance Company and affiliates, until he is no longer disabled; and

4. Award him appropriate attorneys' fees and costs of litigation.

Respectfully submitted,

/S/ Joseph Frabizzio

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